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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 255,107	02 22 1999	ROBERT B HARKNESS	2747-51635 K	8000

7590

11 15 2002

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EXAMINER

LOCKER, HOWARD J

ART UNIT

PAPER NUMBER

1661

DATE MAILED: 11 15 2002

17

Please find below and or attached an Office communication concerning this application or proceeding.



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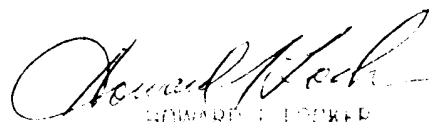
DATE MAILED

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents.

**A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS ACTION IS SET  
TO EXPIRE TWO MONTHS, ~~DAYS~~ FROM THE DATE OF THIS LETTER.**

(see attached)

  
HOWARD E. LOCKER  
EXAMINER  
ART UNIT 1661

The appeal brief filed September 03, 2002 is noted.

In same, specifically at page 12, appellants state that "*No one however skilled could have made, bred, or otherwise derived the HARYup rose plant of this application from information in the publications relied upon by the Examiner.*" However, appellants have not provided copies of these publications, even though appellants have previously averred to the accuracy of the information contained in same.

As appellants are now apparently arguing the specific content of the applied publications, namely NZ PBR ROS 511 and resulting Grant/Reg. Number 1131, and GB Grant/Reg. Number 5467, and has confirmed for the record that such are directed to the same plant, it is necessary for appellants to furnish copies of same (see MPEP 1206 and 37 CFR 1.192(c)(8)) for the record.

### **REQUIREMENT FOR INFORMATION UNDER 37 CFR 1.105**

Appellants and/or the assignee (if applicable) of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined reasonably necessary to the examination of this application.

The information is required to determine when, if ever, the claimed plant variety, 'Haryup', was publicly available prior to the filing date of the instant application.

In response to this requirement, appellant must provide any information available regarding the sale or other public distribution of the claimed plant variety anywhere in the world, including the date(s) of any sale or other public distribution. Also, appellant must provide copies of the above referenced published application, published denomination, and published grants.

The Office does not maintain a collection of Breeder's Rights documents and they are not readily obtainable electronically. It is reasonable to expect that Appellants or Assignee (if applicable) can readily obtain the requested documents and information.

The fee and certification requirement of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

Appellants are reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56.

This requirement is subject to the provisions of 37 CFR 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Serial No. 09/255107

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Art Unit 1661

Any inquiry concerning this communication from the examiner should be directed to Examiner Howard J. Locker whose telephone number is 703-308-2924, and whose normal work hours are Monday through Thursday, from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Bruce Campbell, can be reached at 703-308-4205.

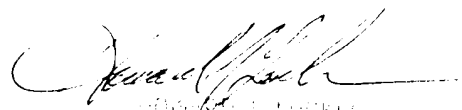
Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

### **TELECOPY/FACSIMILE TRANSMISSION**

Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to this Group via the PTO Fax Center in Crystal Mall 1 (CM 1). The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CM 1 Fax Center number is 703-308-4556 or 703-305-3592.

Howard J. Locker/hjl

November 18, 2002

  
HOWARD J. LOCKER  
EXAMINER  
11-18-02 16-61